Supreme Court, U. S.
FILED
MAR 8 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1267

BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY,
AND POULTRY PROCESSING, INC.,
PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

ALAN JOEL LEVENSON
187 Middle Street
Portland, Maine 04111
Attorney for Petitioners

Blanchard Press, Inc., Boston, Mass. — Law Printers

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	3
The Board's Decision and Order	4
The Decision of the Court of Appeals	5
Reasons For Granting the Writ	6
The Employing Entity—Single or Multiple	11
The Growout Contract	12
Agricultural or Commercial	15
Judicial or Legislative	17
Conclusion	19
Appendix A—(Court of Appeals' Opinion and Judgment)	A-1
Appendix B—(Board and Administrative Law Judge's Decisions)	A-7
Appendix C—(the Bayside Grower Contract)	A-23

Table of Citations

Cases

Abbott Farms, Inc. v. *N.L.R.B.*, 487 F.2d 904 (5th Cir. 1973)	5
Bowie v. *Gonzalez*, 117 F.2d 11, 18 (1st Cir. 1941)	13
Colchester Egg Farms, Inc., 214 N.L.R.B. No. 64 (1974)	5, 9, 11
Drummond v. *Maine Employment Security Commission*, 157 Me. 404, 173 A.2d 353 (1961)	10
Drummonds Poultry Transportation Service v. *Wheeler*, 178 F. Supp. 12 (D.C.S.D. Me. 1959)	10

	Page
Eastern Sugar Associates, 99 N.L.R.B. 809 (1952)	14
Etchechoury v. *Avi-Simplot, Inc.,* 93 Idaho 438, 462 P.2d 737 (1969)	16, 19
Farmers Reservoir & Irrigation Co. v. *McComb,* 337 U.S. 755 (1949)	6, 8, 17
Samuel Gass, et al., 154 N.L.R.B. 728 (1965)	5
Local Union No. 300 v. *McCulloch,* 428 F.2d 396 (5th Cir. 1970)	17
Maneja v. *Waialua,* 349 U.S. 254 (1961)	16
Maplewood Poultry Company v. *Maine Employment Security Commission,* 151 Me. 467, 121 A.2d 360 1956)	10, 11
McElrath Poultry Co., Inc., 206 N.L.R.B. No. 94	5
McElrath Poultry Co., Inc. v. *N.L.R.B.,* 494 F.2d 519 (5th Cir. 1974)	5, 9, 16
Mitchell v. *Hunt,* 263 F.2d 913 (5th Cir. 1959)	13
Mitchell v. *Huntsville Wholesale Nurseries, Inc.,* 267 F.2d 286 (5th Cir. 1959)	14
N.L.R.B. v. *Bayside Enterprises, Inc.,* — F.2d — (1st Cir. 1975)	6, 9
N.L.R.B. v. *Gass,* 377 F.2d 438 (1st Cir. 1967)	5, 14
N.L.R.B. v. *Kent Bros. Transportation Co.,* 485 F.2d 480 (9th Cir. 1972)	6
N.L.R.B. v. *Strain Poultry Farms, Inc.,* 405 F.2d 1025 (5th Cir. 1969)	5, 11, 14
N.L.R.B. v. *Tepper,* 297 F.2d 280 (10th Cir. 1961)	13
N.L.R.B. v. *Victor Ryckebosch, Inc.,* 471 F.2d 20 (9th Cir. 1972)	5, 18
Norton & McElroy Produce, Inc., 133 N.L.R.B. 104 (1961)	13
George I. Petit, Inc., 89 N.L.R.B. 710 (1950)	13
Stockbridge Vegetable Producers, Inc., 121 N.L.R.B. 1395 (1961)	13
Vives v. *Serralles,* 145 F.2d 552 (1st Cir. 1944)	14

	Page
Wirtz v. *Osceola Farms Company,* 372 F.2d 584 (5th Cir. 1967)	14
Wirtz v. *Tyson's Poultry, Inc.,* 355 F.2d 255 (8th Cir. 1966)	5

Statutes, Regulations and Interpretative Bulletins

The Clayton Act, 15 U.S.C. § 17 (1914)	11, 18
Capper-Volstead Act, 7 U.S.C. §§ 291-92 (1922)	11, 18
F.L.S.A., 29 U.S.C. § 203(f) (1964)	2, 10
F.L.S.A. Regulation, 29 C.F.R. 780.126 (1972)	4, 15
Federal Unemployment Tax Act, 26 US.C. § 3306(c)(1) and § 3306(k) (1954)	11
Internal Revenue Regulations, Section 61-4	11
Maine Agricultural Marketing and Bargaining Act, 13 M.R.S.A. 1953 (1973)	13
National Labor Relations Act, 29 U.S.C. § 152(3) (1935)	2
Social Security Act, 42 U.S.C. § 409(h)(2) (1935)	11

Miscellaneous

The Broiler Industry, An Economic Study of Structure, Practices and Problems, U. S. Department of Agriculture (1971)	7
40th Annual Report of the National Labor Relations Board (1975)	5
Legislative History of N.L.R.A., p. 3202	18
Note: "Trust Busting Down on the Farm: Narrowing the Scope of Antitrust Exemptions for Agricultural Cooperatives," 61 Virginia Law Review 341 (1975)	8
Vertical Coordination via Contract Farming, Economic Research Service, U.S. Department of Agriculture, Miscellaneous Publication No. 1073 (1968)	11, 12

In the
Supreme Court of the United States

OCTOBER TERM, 1975

No.

BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY,
AND POULTRY PROCESSING, INC.,
PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioners, Bayside Enterprises, Inc., Penobscot Poultry Company and Poultry Processing, Inc., pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the First Circuit entered in this case on December 10, 1975.

Opinions Below

The opinion of the Court of Appeals is reprinted as Appendix A of this petition. The findings of fact, concusions of law, and order of the National Labor Relations Board are reprinted as Appendix B of this petition and reported at 216 N.L.R.B. No. 92 (1975).

Jurisdiction

The decree of the Court of Appeals was entered on December 10, 1975 (Appendix A, p. A-1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and pursuant to Rule 19-1.(b) of the Rules of this Court.

Question Presented

Whether a poultry organization vertically integrated from hatcheries to processing plant is a "farmer" qualifying its employees who drive feed trucks to its contract farms as exempt "agricultural laborers" within the agricultural exemption of the National Labor Relations Act (29 U.S.C. § 152(3)) as defined in the Fair Labor Standards Act (29 U.S.C. § 203(f)).

Statutes Involved

1. The National Labor Relations Act, 29 U.S.C. § 152(3) "The term 'employee' . . . shall not include any individual employed as an agricultural laborer . . ."

2. Since 1946, the appropriation acts for the National Labor Relations Board have regularly carried a rider which provides that the term "agricultural laborer" shall be defined in accordance with Section 203(f) of the F.L.S.A.

3. The Fair Labor Standards Act, 29 U.S.C. § 203(f) provides "agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . the raising of livestock, bees, furbearing animals, or poultry, and any practices . . . performed by a farmer or on a farm as an incident to, or in conjunction with, such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

Statement of the Case

Petitioners, Bayside Enterprises, Inc. and Poultry Processing, Inc., parent and subsidiary, are an integrated poultry organization located in four separate towns in central coastal Maine. The operation is organized functionally. Bayside carries out the poultry hatching and growing and Poultry Processing is responsible for the milling, processing and marketing. Specifically Bayside has a pedigree hatchery for breeding at Waldo, Maine and a commercial hatchery at Unity, Maine to supply chicks to its farms.

In addition to Bayside's own six farms that produce hatching eggs, there are 119 independent farmers that are under contract with Bayside to raise poultry. The essence of the contract is that Bayside provides each farmer with chicks, feed, medicine, fuel, litter and vaccines, and makes all management and marketing decisions. The farmer is required to furnish the housing utilities and feed, and look after the birds. For this service he is paid on the basis of a guarantee for poultry house square footage plus a bonus based on pounds of poultry he produces. The title to the birds at all times remains in Bayside.

Besides the hundreds of thousands of broilers, roasters and capons located on the contract farms and the chicks and eggs in the hatcheries, Bayside owns the grain, the medicines and other feed ingredients which are milled together at a mill in Thorndike, Maine. This mill is owned and operated by Poultry Processing which mixes the feed to the specifications of the Bayside broiler department manager based on the weather and the age or health of a particular flock.

Bayside employs a farm crew whose duties include going from farm to farm vaccinating, blood testing and cleaning the chicken houses after the flock has been taken out. In all there are some 80 employees who work for Bayside

including a geneticist, four poultry servicemen (who maintain standards of animal husbandry and are constantly checking for disease) and the six feed drivers that are the subject of this case.

Bayside owns four specially constructed feed trucks, three of which are used daily on two shifts by the six feed drivers. Their job is to shuttle back and forth between the feed mill and the 119 contract farms bringing feed and medicine in accordance with the schedule made up by the Bayside dispatcher.

Poultry Processing has about 400 employees divided roughly into 20 in its feed mill and 380 in its Belfast, Maine processing plant. The general offices of the two corporations are at a separate Belfast location. Operating out of the processing plant with separate supervision is a group of drivers whose job is to drive flatbed trailers with coops onto the farms, catch the birds and transport them back to the processing plant. After processing a separate group of drivers at the processing plant with I.C.C. permits, take the birds to market. The processing plant only processes the Bayside birds. However, at the time of this hearing one-third of the production of the feed mill was sold to another unaffiliated farm organization for its own contract farm requirements. It, however, employed an independent feed transportation company to pick up at the feed mill and deliver to its growers. Bayside's feed drivers bring feed to only Bayside's farms.

The Board's Decision and Order

The administrative law judge affirmed by the Board held that the Bayside-Poultry Processing operation constituted "a multifaceted organization whose enterprises and purposes go far beyond traditional farming" and that "while Bayside's own farms and hatcheries may constitute branches of farming, the overall operations of Bayside and Poultry Processing, and more specifically the feed

mill and feed delivery operations, may not be removed from coverage by the Act by utilizing these aspects of Bayside's operations which are traditional branches of farming to characterize Bayside's entire operation as farming".

The decision then stated that the case was indistinguishable from *Samuel Gass, et al.,* 154 N.L.R.B. 728 *enf'd* 377 F.2d 438 (1st Cir. 1967) and *McElrath Poultry Co., Inc.,* 206 N.L.R.B. No. 94 *enf. denied* 494 F.2d 518 (5th Cir. 1974).

The Decision of the Court of Appeals

On the Board's petition for enforcement the First Circuit Court of Appeals was faced with a split of authority with regard to the applicability of the farm exemption as it applies to employees of poultry organizations. On the one side was the Board majority and its own *N.L.R.B.* v. *Gass,* 377 F.2d 438, 444 (1st Cir. 1967) decision holding feed drivers not exempt. On the other side were decisions of the Fifth, Eighth, and Ninth Circuit Courts of Appeals [1] and the minority of the Board chastizing the majority for being unwilling to file a petition for certiorari, notwithstanding five years of adverse decisions. The minority argued it was now time to acquiesce and declare these employees exempt.[2]

Counsel for the corporations sought to have this Court of Appeals confine its *Gass, supra* to the facts of that case; namely, that the employing entity was a trucking company and therefore a separately organized business

---

[1] *McElrath Poultry Co., Inc.* v. *N.L.R.B.,* 494 F.2d 519 (5th Cir. 1974); *Abbott Farms, Inc.* v. *N.L.R.B,* 487 F.2d 904 (5th Cir. 1973); *Wirtz* v. *Tyson's Poultry, Inc.,* 355 F.2d 255 (8th Cir. 1966); *N.L.R.B.* v. *Victor Ryckebosch, Inc.,* 471 F.2d 20 (9th Cir. 1972); and *N.L.R.B.* v. *Strain Poultry Farms, Inc.,* 405 F.2d 1025 (5th Cir. 1969).

[2] *Colchester Egg Farms,* 214 N.L.R.B. No. 64 (1974). See the *40th Annual Report of the National Labor Relations Board* (1975), pp. 67-68.

not entitled to the farm exemption. See, e.g., *N.L.R.B.* v. *Kent Bros. Transportation Co.*, 485 F.2d 480 (9th Cir. 1972).

However, the First Circuit Court of Appeals chose not to accept this attempt to reconcile its holding in *Gass, supra* with the decisions in the other circuits saying it found the other cases "both distinguishable and unpersuasive". The court's approach was to break down petitioners' organization into its component parts — feed mill, processing plant, chick hatcheries, breeding farms and contract farms and then make the judgment that it was a commercial rather than agricultural venture since the bulk of its capital and personnel were devoted to nonfarming operations. It bolstered its argument with a Department of Labor interpretation at 29 C.F.R. 780.126 (1972) having to do with feed dealers and processors. As for the feed drivers, it declared them part of a separate organization "supportive of agricultural activity, but not directly engaged in farming". *N.L.R.B.* v. *Bayside Enterprises, Inc.*, — F.2d — (1st Cir. 1975).

The object of this petition is to put into issue under the agricultural exemption of the N.L.R.B. the status of the vertically integrated poultry organization as an employing entity, to wit, is it a farmer under the secondary definition of farming in *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U.S. 755, 762-63 (1949), and the status of its feed drivers as being incidental to that farming.

Reasons for Granting the Writ

This case emerges out of one of the most dynamic industries in American agriculture. In the 1920's most poultry was produced in small scale farm enterprises, almost completely integrated. Poultry producers commonly hatched eggs on the farm, used home grown feeds, slaughtered and processed poultry. Some even hauled the birds to market. A few retailed them.

Beginning in the 1930's, various phases of poultry production became separate entities and profit centers. Specialized firms began to emerge in primary breeding, hatching, feed milling, processing and marketing. Most prominent were the independent feed dealer and poultry hauler who had various types of supply contracts with processors.

As the scale of specialized firms increased and the industry began to expand rapidly during World War II, problems developed in coordination of firms in various vertical stages. Vertical integration emerged as a means of minimizing or sharing risks with price and production variabilities.

Currently, more than 95 percent of the broilers produced in the United States are grown under contract in integrator-owned or integrator-leased facilities.

A very limited market exists for live broilers produced by independent growers. Most live broiler trading is between integrated firms or processors.

The emerging integrated structure of the broiler industry brought with it the demise of small independent farms. Narrowing profit margins first put specialized hatcheries at a disadvantage. Independent feed dealers and local feed mill next faced the price-costs squeeze. Finally, in the last few years, specialized independent processors faced the same problems.

Today the typical firm in the broiler industry is a large vertically integrated broiler organization.[3]

This development has taken place against the general background of all agriculture in which mechanization, new production technology and sophisticated management systems have proliferated — all designed to achieve greater cost efficiency. In addition, agriculture has begun an ir-

---

[3] The Broiler Industry: An Economic Study of Structure, Practices and Problems, U.S. Department of Agriculture (1971).

reversible course of consolidation accompanied by an increase in size of the average farm.

In the broiler industry this development has seen, in the last 20 years, production of broilers go from 1/3 billion to more than 2½ billion along with a price decline and a quality improvement. Per capita consumption of broiler meat has increased from 0.5 pound in 1934 to an estimated 32 pounds in 1966.

The broiler industry is centered in four general areas of the United States; the South, Delaware, New England and the Far West. Of these, the South is the most important, producing over two-fifths of the output of the industry.[4] Nearly all broilers today are produced by contract growers of integrated broiler firms. Production per farm averages more than 50,000 birds per year.[4A]

A typical integrated broiler producing and marketing firm has its own hatchery, feed mill and processing plant.[5]

The petitioners contend that their feed drivers are entitled to the agricultural exemption under the secondary definition as laid down in *Farmers Reservoir & Irrigation Co.* v. *McComb,* 337 U.S. 755, 762-63 (1949); namely, "any practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm incident to or in conjunction with 'such' farming operations".

Both the National Labor Relations Board and the First Circuit Court of Appeals have denied this position maintaining essentially that Bayside is: 1) not a single farmer because of many contract growers; and 2) is not a farmer at all or at least not predominantly a farmer because its processing plant gives it a commercial coloration.

---

[4] The Broiler Industry, *supra,* p. 5.

[4A] Contract growing has been accompanied by a 900 percent increase in output since 1948. "Trust Busting Down on the Farm; Narrowing the Scope of Antitrust Exemptions for Agricultural Cooperatives", 61 Virginia Law Review 341, 362 (1975).

[5] *Ibid,* p. 22.

The issue of essential importance in this case is what are vertically integrated poultry organizations in contemplation of the law. Since the agricultural exemption of the National Labor Relations Act depends on the Fair Labor Standards Act for its definition, two important labor statutes are involved in this decision. Although the Fair Labor Standards Act says explicitly that the raising of poultry is an exempt agricultural activity, has the vertically integrated poultry operation somehow annihilated itself as an agricultural entity either by having contract farms or by establishing its own processing plant?

This decision by the First Circuit places the issue squarely in conflict. In New England henceforth, the chief enforcement officers of both the National Labor Relations Board and the Wage and Hour Division must rule that a vertically integrated poultry operation is not a farmer and that therefore, its employees are not eligible for the farm exemption. Meanwhile in at least two of the other three producing areas (the Far West, 9th Circuit and the South, Fifth Circuit), the holding is that a vertically integrated organization is a farmer. In a competitive, price conscious industry such as this where pennies make the difference between success and failure and poultry can be frozen and transported across the country in a day as well as to foreign countries, any unequal treatment can be ruinous.

It obviously cannot be explained to the layman as to why the driver of a feed truck for an integrated poultry organization in Georgia is exempt[6] and the same man working for a similar organization in Maine is not. It is little consolation to the corporation that the First Circuit finds decisions of other circuits "unpersuasive"[7] or that it "declines to follow" them.[8]

---

[6] *McElrath Poultry Company, Inc.* v. *N.L.R.B.,* 494 F.2d 518, *per curiam* opinion (5th Cir. 1974).

[7] *N.L.R.B.* v. *Bayside Enterprises, Inc.,* ___ F.2d ___ (1st Cir. 1975).

[8] *N.L.R.B.* v. *Samuel B. Gass,* 377 F.2d 438, 444 n. 12 (1st Cir. 1967).

This issue of contract farming and the relationship of the farmer to the integrator does not confine itself to the poultry industry. The egg industry, although not making use of contract farming to the extent of the poultry industry, is very heavily concerned with the answer to the question as to whether the farmers' contracts amount to a total integration of the farmers into the contractor's business or still allow him to be considered independent.[9]

Within the poultry industry itself there are other, different occupations affected by whether their employer is a farmer or a commercial enterprise — the farm servicemen and the pickup crews, for example.[10]

In addition, a great many other farm commodities are the object of contract farming and have seen a substantial proportion of the entrepreneurship function transferred from the farmer to the contractor. For example, there are tomatoes, green and wax beans, peas, sweet corn and various fruits.

Although not controlled by Section 3(f) of the Fair Labor Standards Act, there are many other statutes that exempt "agricultural labor" from their provisions. The Maine Unemployment Statute is one.[11] In speaking on this same issue concerning the poultry industry, the highest Maine court said "We are not aware of any decision which labels the business of raising poultry as a business

[9] *Colchester Egg Farms*, 214 N.L.R.B., No. 64 (1974).

[10] *Maplewood Poultry Company* v. *Maine Employment Security Commission*, 151 Me. 467, 468, 121 A.2d 360 (1956); See also *Drummons Poultry Transportation Service* v. *Wheeler*, 178 F. Supp. 12 (D. Me. 1959) and *Drummond* v. *Maine Employment Security Commission*, 157 Me. 404, 173 A.2d 353 (1961).

[11] Title 26 M.R.S.A. 1043-1.A (1959) defined argicultural labor substantially like Section 3(f) of F.L.S.A. In 1973, the definition was changed twice, excluding the agricultural labor exemption, unless more than one-half of the product was produced by the operator for which the services were performed. The additional changes excluded the definition entirely for "commercial" hatchery processing and transportation of poultry, but specifically included services performed on a "family-type farm" with not over 100,000 laying birds.

enterprise."[12] *Maplewood Poultry Company* v. *Maine Employment Security Commission*, 151 Me. 467, 472 (1956). The present decision by the First Circuit Court of Appeals changes that. There are other acts as well, concerned with defining agricultural labor.[13]

The Employing Entity — Single or Multiple

Although the emphasis in the First Circuit Court of Appeals' opinion denying the agricultural exemption to Bayside is on the predominance of the commercial components of the business, the decision makes it very clear that even if the corporations were not integrated to the processing plant level that they would not even then be regarded as a farmer. The Court says it is not persuaded by the rationale of the decisions in the other circuits.

It thus firmly takes a position with the majority of the National Labor Relations Board that the raising of the poultry is not being done by the integrator, but by its contract farms. The Court of Appeals in *N.L.R.B.* v. *Strain Poultry Farms, Inc.*, 405 F.2d 1025, 1033 (5th Cir. 1969), says ". . . the Board's finding that the employees were not agricultural employees can only be sustained if respondent's arrangement with the independent growers is viewed as removing it from the primary definition of agriculture pertinent here 'the raising of poultry' ". The dissenters in *Colchester Egg Farms, Inc.*, 214 N.L.R.B. No. 64 (1974), say that the courts have repeatedly rejected the Board's attempt to compartmentalize what is essentially a total "farming" activity.

[12] Vertical Coordination via Contract Farming, Economic Research Service, U.S. Department of Agriculture, Miscellaneous Publication No. 1073, p. 91 (1968).

[13] Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(1), (k) (1954); the Social Security Act 42 U.S.C. 409(h)(2) (1935). In addition the Clayton Act, 15 U.S.C. § 17 (1970) and the Capper-Volstead Act, 7 U.S.C. 291-92 (1970) allow Bayside to join a farm cooperative and Section 61-4 of the Internal Revenue Regulations allow it to file on a cash basis as a farmer

The Growout Contract

As previously mentioned, the poultry industry is now almost entirely operating *under a system of contract* farmers. Considerations of efficiency in feed delivery and other service activity plus assembly of the final product give certain advantages to compact growout territories. The result is local monopolies in the market for contracts.

One study published by the Department of Agriculture seeks to set up a classification system for these farmer-contractor contracts.[14] The system is designed to classify contracts according to the degree to which various elements of entrepreneurship are shifted by contractual agreement from the farmer to the contractor. One view of integration holds that integration increases as elements of entrepreneurship are shifted from the farmer to the contractor, chiefly through assumption of management control and decision-making. Implicit in this view is a corollary assumption that increased integration results in increased assumption of risk and uncertainty by the contractor and increased certainty of price and market for the farmer.

Judged by these standards the poultry industry, in general, and Bayside, in particular, are the most highly integrated of industries and companies. Dividing decision-making into input decisions (acquiring the animals), production decisions and marketing decisions, in all categories, Bayside's control is almost total. (See Appendix C.)

The Bayside-Poultry Processing Management decides what type of poultry to grow and when and where to grow it. It owns the flocks and bears the risk of loss at all phases. It sets production standards, makes the sole decisions as to animal husbandry, including medical care of the poultry. It restricts the farmer from handling any other poultry. It makes all marketing and pricing

[14] Vertical Coordination in Contract Farming, *infra*, p. 74.

decisions, including the timing of the processing of each flock.[15] The feed drivers are controlled by the age and health of each particular flock along with the weather that affects their eating habits.

The First Circuit Court of Appeals uses its own decision in *Bowie* v. *Gonzalez,* 117 F.2d 11, 18 (1st Cir. 1941), for the proposition that the contract farms on which the poultry are grown are each separate independent operations and that they are the farmers and not the contractor or integrator. Although the approach is like other past Board[16] and Court[17] decisions, the application to the

[15] The contract farmers complain that their situation is created in part because economy demands high density growout areas, not allowing any alternative contractor to bid for growers, except in fringe areas. There is also lack of information about comparable contracts allowing market forces to operate in optimum fashion. They also say that even an independent farmer with the capital is forced into a contractual arrangement because of the impossibility of getting chicks and because the system doesn't allow for a live market for independent production. The State of Maine has attempted to help these farmers by passing the *Maine Agricultural Marketing and Bargaining Act of 1973*, 13 M.R.S. 1953, to help "the bargaining position of individual farmers".

[16] *George I. Petit, Inc.*, (1950) 89 N.L.R.B. 710, 711, n. 4. (poultry processing employees whose employer purchased all poultry and eggs are not exempt); *Stockbridge Vegetable Producers, Inc.*, (1961), 121 N.L.R.B. 1395 (truckdrivers and box stitchers of a grower shipper who packs crops grown by another held not exempt); *Norton & McElroy Produce, Inc.*, (1961), 133 N.L.R.B. 104 (truckdrivers and stitchers in the fields are not agricultural laborers if employed by a firm shipping and marketing produce bought from farmers).

[17] *N.L.R.B.* v. *Tepper*, 297 F.2d 280 (10th Cir. 1961) (a dairy employee who worked processing milk products, some of which came from other farms not exempt); *Mitchell* v. *Hunt*, 263 F.2d 913 (5th Cir. 1959) (employees of auction barn selling livestock belonging to other farmers than the farmer operator not exempt). *Mitchell* v. *Huntsville Wholesale Nurseries, Inc.*, 267 F.2d 286 (5th Cir. 1969) (warehouse owners who make advances to growers against marketable plants produced for it was not exempt as Huntsville did not grow the nursery stock. It bought it from independent growers.)

vertically integrated poultry operation is misconceived.

The important factor in determining whether or not the farmer has been truly and totally integrated into the contractor's business is the substance of their relationship.

The Fifth Circuit in the fact of its own decision in *Mitchell* v. *Huntsville Wholesale Nurseries, Inc.*, 267 F.2d 286 (5th Cir. 1959), to bolster the denial of the exemption looked at poultry industry contract farming, and said:

> "The fact that Strain hired the independent growers to raise its birds and contract loaders to catch the birds for loading onto its trucks, would not seem to destroy its claim to having raised the poultry. . . . The trucking operation was a part of an integrated poultry raising operation and although unlike poultry farms of the past, it is today a typical broiler raising operation . . . .
>
> As in all the other cases cited by the Board on this point, the distinction between those situations and the present one is that these birds belonged to the respondent and although the raising of them was shared with independent growers, Strain's activities were more nearly that of one engaged in the 'raising of . . . poultry' than that of a purchaser jobber; Huntsville clearly did not grow the nursery stock in question; it bought it from independent growers."
>
> *N.L.R.B.* v. *Strain Poultry Farms, Inc.*, 405 F.2d 1025, 1032-33 (5th Cir. 1969)[18]

[18] Since *Strain* was decided after *N.L.R.B.* v. *Gass*, 377 F.2d 438 (1st Cir. 1967), the Fifth Circuit considered it and found it to be distinguishable because there the drivers were not employed by the farmers nor were they under their control. Of course Bayside does employ and control the driver; however, the First Circuit chose not to accept the Fifth Circuit's distinction.

Agricultural or Commercial

With this case the Board established and the First Circuit Court of Appeals sustained what was essentially a new rationale to achieve the same result—the denial of the agricultural exemption to an integrated poultry firm. The court decision recast its *Gass* rationale[19] *post hoc* so that the feed drivers were employed by an integrated poultry *processing* company. The interpretative bulletin 29 C.F.R. 780, 126 (1972)[20] having to do with feed dealers and processors was used to bolster the argument. And finally the poultry firm was dismembered into its component parts and pronounced "not predominantly agriculture".

The answer to all of this is obvious. *Gass* was an independent trucking company and never entitled to the farm exemption under the F.L.S.A. Bayside is neither a feed dealer nor a processor, so that the interpretative bulletin does not apply. It, along with its subsidiary, Poultry Processing, Inc., make up a vertically integrated poultry organization whose aim is to prosper raising and selling poultry. As such if it—a typical broiler operation of today—is not considered a poultry raiser, then there aren't any. Bayside-Poultry Processing is not a mercantile enterprise. Common sense tells us it is a farming operation; however, rather than being farmer-based, the modern integrated farm corporation is management based. It has arisen for many reasons, one of the important ones being because of the necessity for closer coordination between the production and marketing phase than price could supply.[21]

[19] 377 F.2d 438, 444.

[20] The decision states this was promulgated in 1974. Actually the date was June 17, 1972, before *McElrath*, *Abbott Farms*, and *Victor Ryckebosch* ignored it.

[21] In addition, individuals are incorporating their operations to take advantage of the tax laws, increased bargaining power, insulation from risk and continuity of management.

However, the primary purpose of the petitioners' poultry business is to produce, hatch, raise and sell poultry. The various components of the corporation constitute a single integrated farming venture producing and processing its own poultry. *Etchechoury* v. *Avi-Simplot, Inc.*, 43 Idaho 438, 462 P.2d 737, 741.

It is important to understand that the real significance of this case and the reason it must be overruled is because drawn to its logical conclusion, it disqualifies every off-farm employee working for a vertically integrated operation from qualifying under the secondary definition of agriculture. This is because the first requisite is that the employee works for a farmer, and if the integrator is not regarded as such, you do not get to the next question as to whether or not his job is incidental to or in conjunction with farming. Just as petitioners do not claim all of its employees automatically exempt, so too the First Circuit Court of Appeals should not allow them to be regarded as automatically covered.

The six feed drivers involved here are controlled by the broiler department dispatcher. They are separate from the processing plant operation. Their job is completely involved in maintaining the growth cycle and health of the birds on each individual farm. They along with the farm servicemen and the pick-up crews are necessary and essential for the raising, feeding, caring for, and management of the poultry growing operation.[22]

---

[22] *Maneja* v. *Waialua* (1961) 349 U.S. 254 (railroad employees); *McElrath Poultry Co.* v. *N.L.R.B.*, 494 F.2d 418 (5th Cir. 1974); *Vives* v. *Serralles*, 145 F.2d 552 (1st Cir. 1944); *Witrz* v. *Osceola Farms Company*, 372 F.2d 584 (5th Cir. 1967); *Eastern Sugar Associates* (1952) 99 N.L.R.B. 809.

Judicial or Legislative

This Court in *Farmers Reservoir and Irrigation Co.* v. *McComb*, 337 U.S. 755, 760 (1949), spoke in general terms about the definition of agriculture:

> "Whether a particular type of activity is agricultural depends, in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function included many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultrural routine. *Economic progress, however, is characterized by a progressive division of labor and separation of function.* (emphasis supplied)

What has happened in the poultry industry is that it has come full circle since the 1920's from the *single farmer performing all functions to the corporate organization performing all functions.* In this case economic progress has resulted in a combination rather than a division in the form of the vertically integrated farm organization.

The question has arisen of how to treat these organizations in contemplation of the law because certainly they have many of the characteristics of a commercial enterprise rather than an agricultural one.[23]

Petitioners contend that it is the wrong approach by judicial fiat to transfer a whole industry from the agricul-

---

[23] However, the agricultural exemption of the N.L.R.A. is not measured by the magnitude of the farmer's planting nor the prolificacy of his harvest. *Local Union No. 300* v. *McCulloch*, 428 F.2d 396, 399 (5th Cir. 1970).

tural to the commercial column. This is particularly true where the statute involved makes particular reference to the raising of poultry which is the exact business of these firms.

N.L.R.B. v. *Victor Ryckebosch, Inc.*, 471 F.2d 20, 21 (9th Cir. 1972) says:

> "The social and economic problems related to large-scale corporate farming are more appropriately resolved by debate and committee study in Congress than by adversary proceedings in Court. If Congress is troubled by the reasoning in Strain, it is free to translate its intent into clearer legislation. The N.L.R.B. has not demonstrated that we need create a conflict between the Circuits on this point."

The farmer has been the subject of special legislation for many decades the origins and rationale for which sometimes having no discernible foundation except politics.[24]

The legislature of this country has just recently taken a second look at the farm laws and are in the process of changing them. Maine is an example with a new bargaining act for farmers and modifications of the definition of agricultural employee in the Unemployment Compensation Law. The federal Congress, although in the past affixing the prohibition in the N.L.R.A. against agriculture in an appropriations act, has also begun to modify long standing agricultural laws.

---

[24] Clayton Act, 15 U.S.C., § 17 (1970), originally passed in 1914; Capper-Volstead Act, 7 U.S.C. §§ 291-92 (1970), originally passed in 1922; "The committee discussed this matter carefully in executive session and decided not to include agricultural workers. We hope that the agricultural worker will be taken care of... I am in favor of giving agricultural workers every protection, but just now I believe in biting off one mouthful at a time. If we can get this bill through and get it working properly, there will be an opportunity later, and I hope soon to take care of the agriculutral worker". N.L.R.A.'s sponsor, Representative Connery, from Legislative History of N.L.R.A., p. 3202.

In April of 1974 by amendment to the Fair Labor Standards Act, it dealt with the exemption from overtime of businesses which would include many vertically integrated farm operations. It amended Section 13 by adding a 13(g) of the Act restricting the exemption from applying to all commonly controlled establishments whose annual gross volume in sales exceeds ten million dollars.

The point is that if there is a feeling that the large farm organization should be covered by the N.L.R.A., exactly how and which ones should be the prerogative of Congress rather than the courts. This is especially true in this area because the origins are so political. See *Etchechoury* v. *Avi-Simplot, Inc.*, 93 Idaho 438, 462 F.2d 737.

Conclusion

Although Belfast, Maine, may not be regarded as the center of the farm belt, the truth is that it is the center of the Maine poultry industry which makes up a significant segment of the state's economic activity. Maine is the largest poultry state in New England.

Bayside-Poultry Processing is a typical vertically integrated poultry operation. The issue raised herein as to whether or not it and others like it are farmers is important to the industry and most particularly now in light of this court of appeals' decision, to New England.

Wherefore the petitioners pray that this petition for a writ of certiorari be granted and that ultimately the complaint against them be dismissed for want of jurisdiction.

Respectfully submitted,

ALAN JOEL LEVENSON
187 Middle Street
Portland, Maine 04111
Attorney for Petitioners

APPENDIX A

United States Court of Appeals
For the First Circuit

No. 75-1070

NATIONAL LABOR RELATIONS BOARD,

PETITIONER,

v.

BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY,
AND POULTRY PROCESSING, INC.,

RESPONDENTS.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before COFFIN, *Chief Judge*,
McENTEE and CAMPBELL, *Circuit Judges*.

Robert A. Giannasi, Assistant General Counsel, with whom *John C. Miller*, Acting General Counsel, *John S. Irving*, Deputy General Counsel, *Elliott Moore*, Deputy Associate General Counsel, and *Elinor Hadley Stillman*, Attorney, were on brief, for petitioner.

Alan J. Levenson, with whom *Clarke C. Hambley, Jr.*, and *Levenson and Levenson* were on brief, for respondents.

December 10, 1975

COFFIN, *Chief Judge*. The sole issue in this petition for enforcement of an order of the National Labor Relations Board is whether truck drivers who deliver feed to poultry farms are exempted from the National Labor Relations Act as agricultural laborers. 29 U.S.C. § 152(3). Respondents, Bayside Enterprises, Inc. and Poultry Processing, Inc.[1]

---

[1] Penobscot Poultry Co. is a defunct subsidiary which provides the trade name of the company's products.

are parent and subsidiary companies engaged in the production of broilers. Bayside directly controls chick hatchery facilities and several breeding farms. The chicks are raised by contracting farms while Bayside retains title to the birds. Poultry Processing, Inc., the subsidiary, operates a mill which provides feed to the independent farms and to an unrelated poultry company. The subsidiary also operates a processing plant which dresses the grown birds.[2] The employees in question work as truck drivers, transporting poultry feed from the mill to the contract farms.

In October, 1973, Local 340 of the Truck Drivers, Warehousemen, and Helpers of America[3] requested recognition as the collective bargaining representative of the feed truck drivers. Bayside recognized the Union and began contract negotiations. After several sessions, the company broke off negotiations and informed the Union that it was not obligated to bargain because the employees were agricultural laborers and therefore not covered by the Act. In an unfair labor practice proceeding, the Board found that the drivers were not agricultural laborers within the meaning of §2(3) of the Act, and that the respondents had violated §§8(a)(1) & (5) of the Act, 29 U.S.C. §§158(a)(1) & (5), by refusing to bargain with the Union. Bayside's sole contention is that the Board erred in concluding that the drivers were not agricultural laborers.

This court has previously addressed the issue presented in this case. In *NLRB* v. *Gass*, 377 F.2d 438, 444 (1st Cir.

---

[2] Poultry Processing, Inc. is a wholly owned subsidiary of Bayside Enterprises, Inc. They share the same corporate officers, and conduct business from the same office. Employees, however, are employed by either Bayside or Poultry Processing. As the operations of the two companies ar highly integrated, we will treat them as one business entity throughout and refer to them jointly as Bayside. *Cf. Witrz* v. *Jackson & Perkins Co.*, 312 F.2d 48, 50 (2d Cir. 1963).

[3] Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

1967), we held that feed truck drivers who were employed by an integrated poultry processing company were not agricultural laborers exempt from the Act. Respondents, however, point to several cases from other circuits which hold that employees engaged in similar work are exempt from the Act. *McElrath Poultry Co., Inc.* v. *NLRB*, 494 F.2d 519 (5th Cir. 1974); *Abbott Farms, Inc.* v. *NLRB*, 487 F.2d 904 (5th Cir. 1973); *NLRB* v. *Victor Ryckebosch, Inc.*, 471 F.2d 20 (9th Cir. 1972); *NLRB* v. *Strain Poultry Farms, Inc.*, 405 F.2d 1025 (5th Cir. 1969). We find these cases both distinguishable and unpersuasive.

Section 2(3) of the Act excludes from the definition of an employee, "any individual employed as an agricultural laborer". Since 1946, riders to the appropriation acts for the Board have regularly provided that the term "agricultural laborer" shall be defined against the background of the Fair Labor Standards Act, 29 U.S.C. § 203(f), which reads:

> "'Agriculture' includes farming in all its branches and . . . includes . . . the raising of . . . poultry, and any practices . . . performed by a farmer or on a farm as incident to or in conjunction with such farming operations . . . ."

The Supreme Court has held that this definition has two distinct parts. *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U.S. 755, 762-63 (1949). The first relates to actual farming operations, and the second, "includes any practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm incidently to or in conjunction with 'such' farming operations." *Id.* at 763. The activities included in the second portion of the definition, however, must be incident to the farming operations of the employer, and not the farming of another. *Id.* at 766 n. 15; *Bowie* v. *Gonzalez*, 177 F.2d 11, 18 (1st Cir. 1941).

Respondents do not claim that the truck drivers are performing services within the first branch of the definition of agriculture. Rather, they contend that Bayside is engaged in farming and that the drivers are performing services incidental to that farming. The administrative law judge found that Bayside and its component parts constitute a single employer with common ownership, management and control of labor relations. *See NLRB* v. *Gass, supra; NLRB* v. *Lipman Brothers, Inc.*, 355 F.2d 15, 21 (1st Cir. 1966). As a whole, Bayside is a multi-faceted organization whose enterprises and purposes go beyond the bounds of farming.

The bulk of the capital and personnel of Bayside is devoted to the feed mill and the processing plant operations which are concededly not farming. The company does operate chick hatcheries and breeding farms which do constitute farming under the applicable statutes. 29 C.F.R. §780.125(b) (1974). In the remaining segment of the business, the raising of chickens to maturity, the actual farming activity is done by the contract farmers. According to current Department of Labor regulations, retention of title to the poultry pending maturity on contract farms does not entitle a business to be classified as a farmer. 29 C.F.R. § 780.126 (1974).[4] Nor does Bayside's delivery of feed, however crucial to the development of poultry on the contract farms it may be, justify classifying Bayside as a farmer. Rather, the Bayside feed delivery system is part of a separate organization, supportive of agricultural activity, but not directly

[4] "Feed dealers and processors sometimes enter into contractual arrangements with farmers under which the latter agree to raise to marketable size baby chicks supplied by the former who also undertake to furnish all the required feed and possibly additional items. Typically, the feed dealer or processor retains title to the chickens until they are sold. Under such an arrangement . . . . [t]he activities of the feed dealer or processor . . . are not 'raising of poultry' and employees engaged in them cannot be considered agricultural employees on that ground . . ."

engaged in farming. *See* 29 C.F.R. § 780.126 (1974), *supra* n. 4; *Farmers Reservoir & Irrigation Co.* v. *McComb, supra* at 761.

We therefore conclude that Bayside cannot be classified as a farmer for that portion of its business which supports the raising of poultry on contract farms. Although Bayside is a farmer in relation to the chick hatcheries and breeder farms, the truck drivers are not employed incidental to or in conjunction with this limited farming activity. Consequently, they are not agricultural laborers within the meaning of the Act.

The cases cited by respondents are readily distinguishable by the character of the employing entity. In both *NLRB* v. *Strain Poultry Farms, Inc.*, and *Abbott Farms, Inc.* v. *NLRB, supra*,[5] the employers were primarily engaged in traditional agriculture, and, unlike Bayside, owned no processing plant to dress the poultry. The activities of the employees were found to be incidental to the agricultural functions of their employers. In contrast, Bayside's operations are not predominantly agricultural, and it cannot claim the exemption for most of its employees.

The orders of the Board are enforced.

[5] The other cases cited by the respondents are summary denials of enforcement which rely on *Strain* and *Abbott, McElrath Poultry Co., Inc.* v. *NLRB, supra* (*Abbott*); *Victor Ryckebosch, Inc.* v. *NLRB, supra* (*Strain*).

United States Court of Appeals
For the First Circuit

No. 75-1070

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,
v.
BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY, and
POULTRY PROCESSING, INC.,
RESPONDENTS.

DECREE
Entered December 10, 1975

This cause came on to be heard upon an application for enforcement of an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The orders of the National Labor Relations Board are hereby affirmed and enforced.

By the Court:
(s) DANA H. GALLUP
Clerk

A True Copy
ATTEST:
(s) DANA H. GALLUP
Clerk

[Cert. cc: N.L.R.B. and Messrs. Moore and Levenson;
cc: Mr. Fuchs.]

APPENDIX B

216 NLRB No. 92 D - 9553
Belfast, Maine

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 1-CA-9721

BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY,
POULTRY PROCESSING, INC.
and
TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 340, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

On September 25, 1974, Administrative Law Judge David S. Davidson issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1] and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

[1] Respondents' request for oral argument is denied as the record and briefs in our opinion adequately present the positions of the parties.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents, Bayside Enterprises, Inc., Penobscot Poultry Company, and Poultry Processing, Inc., Belfast, Maine, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. FEB 5 1975

JOHN H. FANNING, *Acting Chairman*
HOWARD JENKINS, JR. *Member*
JOHN A. PENELLO, *Member*

(SEAL) NATIONAL LABOR RELATIONS BOARD

JD-629-74
Belfast, Maine

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 1-CA-9721

BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY,
POULTRY PROCESSING, INC.
and
TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 340, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

S. Anthony di Ciero, Esq., of Boston, Mass., for the General Counsel.
David Cohen, Esq., for Portland, Maine, for the Charging Party.
Alan Levenson, Esq., of Portland, Maine, for the Respondents.

DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge: Pursuant to a charge filed on March 26, 1974, by Truck Drivers, Warehousemen and Helpers Union, Local No. 340, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, a complaint issued on May 7, 1974, and was thereafter amended on June 20, 1974. The complaint, as amended, alleges that Respondents violated Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union as the exclusive representative of feed truckdrivers employed by Bayside. Respondents have filed an Answer and an Amended Answer in which they deny the commission of any unfair labor practices. The principal issue raised is whether the feed truckdrivers employed by Bayside are

agricultural laborers within the meaning of Section 2(3) of the Act.

On June 26 and 27, 1974, a hearing was held before me at Belfast, Maine, at which all parties appeared and had an opportunity to present evidence. At the conclusion of the hearing oral argument was waived, and the parties were given leave to file briefs which have been received from the General Counsel and Respondents.

Upon the entire record in this case, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

I. The Business of the Respondents

Bayside Enterprises, Inc., herein referred to as Bayside, and Poultry Processing, Inc., are Maine corporations having their principal offices in Belfast, Maine. Bayside is engaged in the breeding and raising of poultry, and Poultry Processing is engaged among other things in the dressing and processing of poultry for market. Bayside and Poultry Processing each in the course of its business annually receives goods valued in excess of $50,000 from points outside the State of Maine. Bayside and Poultry Processing concede that each is an employer engaged in commerce within the meaning of the Act, and I find that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

The Union is a labor organization within the meaning of the Act.

III. The Alleged Unfair Labor Practices

A. *The Facts*

1. The refusal to bargain

The Union and Amalgamated Meat Cutters Local 385 jointly represent a unit of Poultry Processing employees including those who work in its processing plant, pick-up crews which pick up poultry from farms for processing, and truck-

drivers. On or about October 21, 1973, the Union requested recognition as representative of drivers employed by Bayside who deliver feed for Bayside to poultry farms. Through one of its officers, Bernard Lewis, Bayside recognized the Union and began to negotiate with it for an agreement. After several meetings, however, Lewis informed the Union that Bayside believed the feed truckdrivers were agricultural employees and that it was not obligated to bargain with the Union for them. Negotiations were terminated on or about December 14, 1973, giving rise to this proceeding.

2. The operations of Bayside and Poultry Processing

Poultry Processing is a wholly owned subsidiary of Bayside. Poultry Processing in turn has several operating divisions, some of which are not located in the Belfast area and have no direct involvement in this proceeding.

Bayside owns and operates two hatcheries and six primary breeding farms on which it develops and raises breeder stock as the source of eggs which are hatched to provide chicks for poultry production. Bayside has agreements with approximately 119 independent farms in the area around Belfast for the care and feeding of chickens from the age of one day until they are ready for processing for the market as broilers, roasters, or capons.

During the time that the chickens are on the farms Bayside determines what they are to be fed and furnishes all necessary feeds and other supplies to the farms. Bayside has employees who visit the farms periodically to determine whether any special care or medicaments may be needed, and they provide supervision to farmers for the care and management of the flock. The farmers provide necessary space for the flocks, storage facilities for supplies, and the labor required to care for the flocks. Title to the chickens remains in Bayside until they leave the farms for processing.

All but a small portion of the poultry raised by Bayside is sold to its subsidiary Poultry Processing and processed for market at Poultry Processing's Belfast plant which operates under the trade name Penobscot Poultry Company.[1] Crews employed by Poultry Processing come to the farms, load the poultry into coops, and truck the poultry to the Belfast plant. At the plant the poultry is weighed, and title is deemed to pass to Poultry Processing at that point. Poultry Processing slaughters, dresses, sells and ships the dressed poultry.

Bayside purchases some feed from a farmers' cooperative of which it is a member,[2] but 80 to 85 percent of its feed needs are supplied by a mill at Thorndike, Maine, operated by Poultry Processing under the trade name Penobscot Feeds. About two thirds of the feed processed by Penobscot Feeds goes to Bayside, and the remaining third is sold to Fort Halifax Packing Co., an unrelated poultry raising enterprise. Since May 1, 1974, Bayside has purchased feed ingredients directly from suppliers and has paid Poultry Processing a milling fee for milling and mixing feed. Poultry Processing purchases the ingredients for the feed sold to Fort Halifax and sells the feed to it. Before May 1, 1974, Poultry Processing purchased all the ingredients and sold feed to both. Feed deliveries to Fort Halifax are made by an independent contractor paid by Fort Halifax. Feed deliveries from Penobscot Feeds to farms under contract with Bayside are made by the feed truckdrivers employed by Bayside whose status is at issue in this proceeding.

---

[1] The name Penobscot Poultry Company apparently is owned by Penobscot Poultry Co., Inc., also a wholly owned subsidiary of Bayside, which is no longer an operating corporation and remains only as a corporate shell.

[2] Most of the feed purchased from this source is used on Bayside's own breeder farms or for rooster and capon flocks being raised for Bayside.

Bayside and Poultry Processing have common officers and directors, a common corporate office, and a common controller. In the office two clerical employees are on the payroll of Bayside, and seven are on the payroll of Poultry Processing. The controller, office manager, and an accountant are carried on the payroll of Poultry Processing but do joint work for both corporations. A portion of their cost is charged to Bayside each year. There are numerous transactions between the two corporations, and checks are written transferring funds between the two corporations for each transaction. The persons who sign the checks are the same for both corporations.

Bayside has a broiler department manager who is in charge of all farm activities. Poultry Processing has an operations manager at the processing plant and a manager at the feed mill. These three managers report directly to Herbert Hutchins, general manager of Bayside.

Bernard Lewis, an officer of both corporations has represented Poultry Processing in bargaining, and Bayside General Manager Hutchins has participated in bargaining and the processing of grievances for Poultry Processing. Lewis and Hutchins also represented Bayside in initial dealings between Bayside and the Union relating to the Bayside drivers.

3. The duties of the feed truckdrivers

Bayside employs six feed truckdrivers who work on two shifts, from 3 a.m. to 1 p.m. and from 1 p.m. to 9 p.m. Their principal duty is to deliver feed to the Bayside contract farmers. Bayside also employs a dispatcher who directs the feed truckdrivers and appears to be a supervisor within the meaning of the Act. The dispatcher works closely with and receives direction from Bayside's broiler department manager and from Poultry Processing mill supervisor Merle Weymouth.

Feed is the source of protein for the poultry raised by

Bayside. It consists primarily of corn and soy, but it may have up to 25 other ingredients added to it in varying proportions to provide vitamins, minerals, amino acids, growth stimulation, and medication. After mixing and grinding, feed may be delivered without further processing as mash, with further processing through a steam pressure system as pellets, or after further cracking as crumbles. The exact composition and type of feed fed poultry depends upon the age and health of the birds, outside temperatures, and the type of bird being raised (broiler, roaster, capon).

The broiler department manager makes up a feeding schedule for each flock of birds setting forth the type and composition of the feed to be supplied throughout the growth cycle of the flock. From this schedule the dispatcher makes up a delivery schedule designed to ensure that the farmer at all times has the right amount of feed of the proper variety at the farm to feed the poultry in accord with the schedule. During the growth cycle of a flock, there may be changes in the feeding schedule attributable to a variety of factors. These are communicated to the dispatcher by the broiler department manager. The dispatcher then alters delivery schedules accordingly.

The drivers are given delivery tickets which tell them the type, composition, and amount of feed to be delivered to each farm. At times they load their trucks and at times the dispatcher loads them. The drivers drive from the Thorndike mill to the farms, and unload the feed into farm storage bins. At times farmers orally instruct the drivers as to placement of the feed, but more often the farmers leave notes for the drivers with such instructions. The drivers are expected to unload the proper amounts of feed into the designated bins, to make certain that old feed is shaken to the bottom of the bins to avoid mold, and to keep moisture out of the bins in bad weather. The farmers rely on the drivers to deliver the right quantities of feed

to the right places. Delivery of the wrong feed could affect development of a flock adversely, and a farmer's compensation for raising a flock is affected by the final weight of the flock as well as the cost of feed and other supplies provided by Bayside.

The drivers each make deliveries to three to four farms a day. A small portion of their time is spent at the feed mill with the balance divided rather evenly between travel time and unloading time at the farms. While on the farms, the drivers have no direct contact with the poultry, and may or may not have contact with the farmer on any single visit.

A major problem in raising chickens is disease, and Bayside takes precautions to try to prevent the spread of disease from one farm to another. Because same diseases may be physically transmitted, the drivers are required to follow specified sanitation procedures upon arriving at and leaving each farm and upon arriving back at the feed mill. Each driver carries disinfectant, a pail, a foot pan, a water bucket, and a sprayer in his truck. Before leaving his truck to unload, he must wash his boots. Upon leaving each farm he must spray the truck tires and scrub his boots. When he arrives back at the mill he must wash the under carriage of his truck. Comparable precautions are required of all those who enter the farms, including the Poultry Processing crews which remove flocks from the farms for slaughter and processing. Since chickens are sensitive to unusual noises and flashes of light, the drivers must drive slowly and quietly while on the farms and avoid reflections of light from their trucks into the poultry houses.

On occasion in the past Bayside feed drivers have picked up feed from Bayside's other source, the farmers' cooperative, and have delivered it to Bayside's farms. However, for the most part feed from that source is de-

livered to Bayside's farms by drivers employed by the farmers' cooperative. Bayside's drivers make practically all deliveries of feed from the Thorndike mill to Bayside farms, but in the event of equipment failure, Bayside utilizes an independent contractor, Richard Hodges, to make feed deliveries from the Thorndike mill to the contract farmers. Hodges is regularly used by Fort Halifax Packing Co., to make deliveries from the Thorndike mill to its farms. Bayside's feed drivers in the past have occasionally but infrequently been used to haul feed ingredients from suppliers in Gloucester, Massachusetts and Rockland, Maine to the Thorndike mill.

B. *Concluding Findings*

The only issue in this case is whether the six feed truckdrivers are agricultural laborers within the meaning of the Act. If they are, Bayside had no obligation under Section 8(a)(5) of the Act to bargain with the Union with respect to them. If they are not agricultural laborers, Bayside in effect concedes that they constitute an appropriate unit for collective bargaining, that the Union represents them, and that Bayside is obligated to bargain with the Union with respect to their wages, hours, and working conditions.

Section 2(3) of the Act excludes from the definition of an employee "any individual employed as an agricultural laborer." Since 1946 riders to the appropriation acts for the Board have regularly provided that the term "agricultural laborer" shall be defined in accordance with Section 3(f) of the Fair Labor Standards Act (29 U.S.C. §203) which reads:

> Agriculture includes farming in all its branches and . . . includes . . . the raising of . . . poultry, and any practices . . . performed by a farmer or on a farm as an incident to in conjunction with such farming operations.

The General Counsel contends that the operations of Bayside and Poultry Processing constitute a single integrated enterprise, that those operations as a whole do not constitute farming within the meaning of the Fair Labor Standards Act, and that the feed truckdrivers are neither engaged in farming nor do they perform duties incidental to or in conjunction with farming. Bayside contends that it is engaged in farming, that its operations are separate from those of Poultry Processing, and that in any event its feed truckdrivers perform duties incidental to or in conjunction with farming.

The issue in this case is not novel. In several decisions the Board has considered the status of feed truckdrivers and other drivers performing services for poultry raising enterprises similar in whole or in part to those of Bayside. The Board has generally found such drivers to be employees within the meaning of the Act.[3] Although Courts of Appeals for the Fifth and Ninth Circuits have expressed disagreement with the Board's conclusions in these decisions, the Court of Appeals for the First Circuit has enforced one of these decisions and to this point the Board continues to adhere to the approach expressed in them.[4]

The reasoning of the Board is set forth in detail in these decisions and need not be retraced here. It seems clear that following these decisions the Board woud not regard Bayside's operations in the aggregate as farming and would not view the feed drivers as directly engaged in farming

---

[3] *Samuel B. Gass, et al.*, 154 NLRB 728, enf'd 377 F.2d 438 (C.A. 1); *Strain Poultry Farms, Inc.*, 163 NLRB 972, enf. denied 405 F.2d 1025 (C.A. 5); *Victor Ryckebosch, Inc.*, 189 NLRB 40, enf. denied 471 F.2d 20 (C.A. 9); *Abbott Farms, Inc.*, 199 NLRB No. 60, enf. denied 487 F.2d 904 (C.A. 5); *Imco Poultry Division of International Multifoods Corporation*, 202 NLRB No. 44; *McElrath Poultry Co., Inc.*, 206 NLRB No. 94, enf. denied 74 L C ¶10,060 (C.A. 5).

[4] See *Imco Poultry, Division of International Multifoods Corporation, supra*, at p. 6, n. 11.

or in the performance of duties incidental to or in conjunction with farming.

While Bayside contends that it is an agricultural enterprise, Bayside is much more than that. True, it owns and directly operates hatcheries and farms, and these activities undoubtedly qualify it for membership in a farmers' cooperative and for designation as an agricultural enterprise for certain other purposes. But Bayside's operations are, as contended by the General Counsel, highly integrated with those of its subsidiary Poultry Processing, and the evidence set forth above clearly supports the conclusion that they constitute a single employer for purposes of the Act. There is common ownership, management, and control of labor relations, and close interrelation and integration of operations. Taken together Bayside and Poultry Processing constitute a multifaceted organization whose enterprises and purposes go far beyond the bounds of traditional farming. While Bayside's own farms and hatcheries may constitute branches of farming, the overall operations of Bayside and Poultry Processing, and more specifically the feed mill and feed delivery operations, may not be removed from coverage by the Act by utilizing these aspects of Bayside's operations which are traditional branches of farming to characterize Bayside's entire operation as farming.[5] It is also self-evident that the drivers themselves are not engaged directly in farming in the performance of their duties.

The question remains whether the delivery of feed to the farms under contract to Bayside should be considered the performance of practices on a farm incidental to or in conjunction with farming. The General Counsel contends, and I believe correctly, that the facts in this case are indistinguishable from those in *Samuel B. Gass, et al., supra,* in which the Board with the agreement of the First

[5] *McElrath Poultry Company, Inc., supra,* at p. 3-4.

Circuit held that feed truckdrivers duties were incidental to the operation of the feed mill rather than to the operation of any farm. While superficially *Gass* may be distinguished in that there the drivers were employed by a separate corporation which acted ostensibly as an independent contractor to haul feed, that corporation was found to constitute a joint employer of the drivers along with several other integrated corporations found to be a single employer and engaged in an enterprise substantially the same as that of Bayside and Poultry Processing. The facts in *McElrath Poultry Company, Inc., supra,* also are indistinguishable on any meaningful basis from those in this case.

Bayside contends that these decisions rest on an assumption that the delivery of feed is similar to the delivery of electricity or water, that the evidence in this case shows that assumption is unwarranted, and that *Gass* should not be followed for that reason. Bayside relies on the evidence that feed truckdrivers must take precautions to avoid transmission of disease, unusual noises and sudden reflections of light in the delivery of feed, and must deliver the right kind of feed to the right bin in the right amount while exercising care to see that old feed is shaken to the bottom of the bin and that precipitation does not get into the bins. Of course, there are differences between the delivery of feed and electricity and water, but these differences cannot be presumed to have been unknown to the Board in the past[6] do not involve more than routine action on the part of the drivers, and do not involve the performance of duties bearing any special relationship to farming. The enumerated aspects of the drivers duties do not alter the basic character of their duties.

[6] See *Victor Ryckebosch, Inc., supra,* at 42, n. 4; see also *McElrath Poultry Company, Inc., supra,* at p. 4, n. 6.

Following *Gass* and *McElrath* I conclude that the feed truckdrivers employed by Bayside are not agricultural laborers but are employees within the meaning of the Act. As there is no issue as to unit, majority, or withdrawal of recognition, I further conclude that the Union is the exclusive representative of the drivers and that Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union for them.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondents, Bayside Enterprises, Inc., and Poultry Processing, Inc., set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondents Bayside Enterprises, Inc., and Poultry Processing, Inc., engaged in certain unfair labor practices, I shall recommend that they be required to cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

Conclusions of Law

1. Respondents Bayside Enterprises, Inc., and Poultry Processing, Inc., constitutes a single employer and are engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All feed truckdrivers of Respondent Bayside Enterprises, Inc., employed out of its Thorndike Maine, location, excluding all office clerical employees, professional employees, guards, and all supervisors as defined in the

Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since on or about October 21, 1973, the Union has been and now is the exclusive bargaining representative of the employees in said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to meet with the Union to engage in collective bargaining since on or about December 14, 1973, Respondents have engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[7]

ORDER

Respondents, Bayside Enterprises, Inc., and Poultry Processing, Inc., their agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment with Truck Drivers, Warehousemen and Helpers Union, Local No. 340, a/w International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, as the exclusive representative of the employees in the appropriate unit described in paragraph 3 of the section of this Decision entitled "Conclusions of Law."

---

[7] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain with the Union as the exclusive bargaining representative of the employees in the previously described appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at their Thorndike, Maine, place of business copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondents' authorized representative, shall be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the receipt of this Decision, what steps Respondents have taken to comply herewith.

Dated at Washington, D.C.

(s) DAVID S. DAVIDSON
DAVID S. DAVIDSON
Administrative Law Judge

---

[8] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX C

BAYSIDE ENTERPRISE, INC.

153 High Street
Belfast, Maine

Contract

BAYSIDE ENTERPRISES, INC., AND ———————————
EXCLUSIVELY; BROILER, ROASTER AND CAPON CONTRACT.

This contract made this ——— day of ————————, 19——, between Bayside Enterprises, Inc. of Belfast, hereafter referred to as "Bayside" and ————————, referred to hereafter as the "Grower". Bayside will deliver baby chicks to the Grower's farm at ————————, Maine to be grown out as either Broilers, Roasters, or Capons. The number of baby chicks to be placed on the farm and the Growing Program to be followed will be determined by Bayside. The Grower will give his best care and management to the growing of chicks placed on the farm in accordance with Bayside's Feeding and Management Programs. This contract shall remain in effect, with the following provisions, for successive flocks as may be placed by mutual agreement.

BAYSIDE AGREES:

Section A:

1.) To furnish all chicks, feed, fuel, litter, medicaments, and vaccines.
2.) To provide supervision in the care and management of the flock.
3.) To be the sole judge in determining when a facility shall be sprayed or washed and is adequately prepared for the placement of another flock.

4.) To pay for spray, power wash, and disinfectants used as such which then become apart of the Grower's total cost of production, except the cost of powerwash before and/or following a flock of Capons. A Grower with proper equipment may wash or spray his own facility, (or pay to hire this service), for which no charge will be assessed against the flock concerned.

5.) To furnish the Grower with copies of all charge slips for feed, fuel medicaments, litter, wash and spray, poultry weight tickets, and bonus calculation sheets.

Section B — To Guarantee the Broiler Grower:

1.) A payment of $0.01 per square foot for the cleanout period within 10 days after a subsequent Bayside flock is placed.

2.) A payment of $0.007 per square foot per week to be paid bi-weekly during the growing period.

3.) A "Balance of Guarantee Payment", within 10 days after the flock is marketed, to equal $0.01225 per square foot per week. (This total includes 1 & 2 Above.)

4.) A "Bonus Payment" based upon an equal increment spread from the lowest cost flock maximum of $0.01775 per square foot per week to a minimum of $0.01225 per square foot per week to the highest cost flock settling within a given settlement period. (This total includes 1, 2, & 3 above.)

5.) An additional "Electric Power Payment", within 10 days after the flock is marked, equal to $0.0005 per square foot per week. This payment to be for Windowless facilities with fan capacities and equipment in accordance with Bayside specifications.

Section C — To Guarantee Roaster Growers:

1.) A payment of $0.01 per square foot for the cleanout period within 10 days after a subsequent Bayside flock is placed.

2.) A payment of $0.007 per square foot per week to be paid bi-weekly during the growing period.

3.) A "Balance of Guarantee Payment", within 10 days after the flock is marketed, equal to $0.0125 per square foot per week. (This total includes 1 & 2 above.)

4.) A "Bonus Payment" based on an equal increment spread from the lowest cost flock maximum of $0.0185 per square foot per week to a minimum of $0.0125 per square foot per week to the highest cost flock settling within a given settlement period. (This total includes 1, 2, & 3 above.)

5.) An additional "Electric Power Payment", within 10 days after the flock is marketed, equal to $0.0005 per square foot per week. This payment to be for Windowless facilities with fan capacities and equipment in accordance with Bayside specifications.

Section D — To Guarantee the Capon Grower:

1.) A payment of $0.01 per square foot for the cleanout period within 10 days after a subsequent Bayside flock is placed.

2.) A payment of $0.01 per square foot per week to be paid bi-weekly during the growing period.

3.) A "Balance of Guarantee Payment", within 10 days after the flock is marketed, to equal $0.0135 per square foot per week. (This total includes 2 above.)

4.) An additional "Electric Power Payment", within 10 days after the flock is marketed, equal to $0.0005 per squire foot per week. This payment

to be for Capon Growers with Windowless facilities in accordance with Bayside specifications.

THE GROWER AGREES:

Section E:

1.) To furnish adequate housing, equipment, water, labor, feed, and oil storage facilities as necessary for an efficient operation, as in accordance with Bayside specifications. (See specification sheet attached.)

2.) To maintain an effective rodent and wild bird control program.

3.) To provide State approved disposal facilities for dead birds.

4.) To have no poultry other than Bayside's on the farm during the period of this contract.

5.) To use only those materials supplied by Bayside for the purpose of feeding and maintenance of birds under this contract.

6.) To provide suitable facilities for water medication.

7.) TO BE PRESENT DURING THE LOADING OUT OF POULTRY.

8.) To keep an accurate flock inventory, on sheets provided by Bayside, and to have these sheets available to the "Load Out Foreman" when poultry is loaded.

9.) To maintain suitable roadways for feed, fuel and chick deliveries and for the efficient load out of flocks. To pay all wrecker service as required by live haul, chick, feed, or fuel delivery trucks as attributed to unsuitable roadways on Grower's farm.

10.) To follow instructions of the Bayside Supervisor in the care and management of Broiler, Roaster

or Capon flocks. To allow such personnel to enter any facility pertinent to this contract at reasonable times.

11.) That Bayside will remain the owner of all poultry, feed, and other materials, and may without process of law, enter on the premises of the Grower to remove or to assume the active care and management of the flock—if Bayside believes that said flock is not receiving proper care and attention. Cost of labor or other expenses thus incurred will be deducted from the contract payment.

12.) To pay a charge of $10.00 per ton for the removal of any feed left on the farm, in "excess" of a calculated 1 day supply at the time a flock is removed. A one day supply will be considered 200 lbs. per 1,000 Broilers and 300 lbs. per 1,000 Roasters and Capons. Feed left on the farm due to schedule changes shall not be considered "EXCESS".

13.) That a prorated payment will be made based upon respective guarantees—in lieu of Sections B, C, & D—the payment will be prorated on the basis of average mortality within a settlement, original flock density, and actual percentage salvaged when excessive bird losses resulted from:

a.) An act of God (including, but not limited to, fire, winds, snow, or flooding).

b.) OR, over 4% in excess of the average die as a result of lack of oxygen and/or heat exhaustion.

14.) That minimum payment will be set at $0.0075 per square foot per week in cases described under Item 13 above.

SETTLEMENT COST ANALYSIS:

Section F:

Charges for monthly cost caluculations will be as follows:

1.) Broilers—Chix		$0.15
	Feed	$100/Ton
	Fuel	$0.20/Gal.
	Medicaments	Per Type
	Litter	$8.00/Cord
	Wash and Spray	Invoice Charge
2.) Roasters—Chix		$0.15
	Feed	$100/Ton
	Fuel	$0.20/Gal.
	Medicaments	Per Type
	Litter	$8.00/Cord
	Wash and Spray	Invoice Charge

Age to Weight Adjustment factor—$0.00010 per .01 lb. above and below average ROASTER MALE weight. (See attached example.)

BAYSIDE AND THE GROWER MUTUALLY AGREE:

Section G:

1.) That the Grower accept full and exclusive liability for the payment of any and all taxes arising as a result of the performance of this contract including, but not limited to, any and all taxes for Workmen's Compensation Insurance, or Old Age Benefits or Annuities now or hereafter imposed by any persons engaged in the performance of this Agreement on behalf of the Grower, but excluding local taxes on birds.

2.) That the Grower, his agents and employees shall not be considered to be employees of Bayside for any purpose whatsoever.

3.) That this contract supercedes and replaces all previous Broiler, Roaster and Capon contracts.

4.) That this contract may be cancelled for sustained inferior performance, or violation of the terms of this contract by either party.

5.) That notice of contract termination will be given for a subsequent flock five weeks prior to removal of the preceding flock by either party.

IN WITNESS WHEREOF, the parties hereto have executed these presents this _____ day of _____, 19__.

BAYSIDE ENTERPRISES, INC.

BY: _____

GROWER: _____

_____

Witness